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TELEPHONE, INC., and JASON MILLS

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION**

JONATHAN FINESTONE,

Plaintiff,

v.

UTILITY TELECOM GROUP, LLC,
UTILITY TELEPHONE, INC., JASON
MILLS, and DOES 1-10,

Defendants.

Case No. 2:20-cv-00230-TLN-KJN

**STIPULATED PROTECTIVE ORDER
GOVERNING CONFIDENTIAL
INFORMATION**

Plaintiff JONATHAN FINESTONE (“Plaintiff”) and Defendants UTILITY TELECOM GROUP, LLC, UTILITY TELEPHONE, INC., and JASON MILLS (“Defendants”) by and through their respective counsel of record submit the following, pursuant to Local Rule 141, hereby stipulate to the below in connection with discovery, pretrial activities, trial, and post-trial activities including appeals, in the above captioned case (“Action”). The Parties further

1 acknowledge, as set forth in Section 8, below, that this Stipulated Protective Order does not
2 entitle them to file confidential information under seal; Civil Local Rule 141 sets forth the
3 procedures that must be followed and the standards that will be applied when a party seeks
4 permission from the court to file material under seal.

5 1. **Scope of “Confidential” Material.** Any Party or non-party that produces any
6 document, item, material, deposition testimony, or information (collectively, “material”) during
7 discovery in this Action may designate as Confidential material that has not been made public by
8 the disclosing party and that the disclosing party reasonably and in good faith believes constitutes,
9 contains, reveals, or relates to confidential research, development, process, operational, technical,
10 financial, commercial, or marketing information of the designating party. Material considered
11 Customer Proprietary Network Information within the meaning of 47 U.S.C. § 222 shall be
12 treated as Confidential hereunder, whether so designated or not.

13 2. **Designation of “Confidential” Material.** A Party or non-party that produces
14 material in discovery in this Action may designate it as Confidential by stamping or otherwise
15 marking it “CONFIDENTIAL” or the equivalent, in a manner that will not interfere with the
16 legibility of the document. Any Party designating material as Confidential shall not designate the
17 entirety of the material as confidential except on a good faith belief that every part of the material
18 is entitled to Confidential designation. If the entirety of the material is not entitled to Confidential
19 designation, the producing Party shall mark only portions or pages entitled to Confidential
20 designation and shall produce the remainder of the document as public. If any Party or non-party
21 inadvertently discloses material which that party deems entitled to designation as Confidential,
22 but which that party did not so designate, such party shall promptly (but no later than 15 business
23 days), upon discovery of such non-designation, inform counsel of record in the Action in writing
24 about the non-designation and the proper Confidential designation. Counsel of record, upon
25 receiving such notice, shall thereafter treat the material as Confidential as if designated pursuant
26 to this Stipulated Protective Order. To the extent that, prior to such notice, a Party or counsel of
27 record may have disclosed such material to those other than persons authorized pursuant to this
28 Stipulated Protective Order, the Party or counsel shall not be deemed to have violated this

1 Stipulated Protective Order in any respect, but shall make every good-faith effort to retrieve the
2 material promptly from such persons, and to limit any further disclosure pursuant to this
3 Stipulated Protective Order.

4 3. **Challenge to Designations.** A receiving Party may challenge a producing Party's
5 or non-party's designation of material at any time. Any receiving Party disagreeing with a
6 Confidential Material designation may request in writing that the producing Party or non-party
7 change the designation of a portion or all of the material. Pursuant to Local Rule 251(b), the
8 Parties shall attempt to resolve each challenge in good faith by conferring directly within ten (10)
9 business days after receipt of that request. If the Parties are unable to reach agreement within this
10 ten (10) business day time-frame, it shall be the obligation of the producing Party or non-party to
11 file and serve an appropriate motion to the United States District Court for the Eastern District of
12 California (the "Court"), no later than five (5) business days after the conclusion of the ten (10)
13 business day period, requesting the Court to retain confidentiality under Local Rule 140 (and in
14 compliance with Local Rule 141, if applicable). If such a motion is timely filed, the disputed
15 material shall be treated as Confidential under the terms of this Protective Order until the Court
16 rules on the motion. If the producing Party or non-party fails timely to file such a motion, the
17 disputed material shall lose its designation as Confidential and shall not thereafter be treated as
18 Confidential in accordance with this Stipulated Protective Order. In connection with a motion
19 filed under this provision, the producing Party or non-party shall bear the burden of establishing
20 that the disputed material should be treated as Confidential.

21 4. **Restrictions on Use of Confidential Material.** Material produced in response to
22 discovery requests in this Action and designated Confidential shall be used and disclosed solely
23 in connection with the Action and shall not be used or disclosed in connection with any other
24 litigation or for any business, commercial, competitive, personal, or other purpose.

25 5. **Access to Confidential Material.** Material designated as Confidential shall be
26 maintained in confidence by the Parties to this Action and their respective counsel of record
27 solely for the uses as provided in Paragraph 4 of this Order and shall not be disclosed to any
28 person except:

- a. The Court and its officers;
- b. Those Parties to this Action or officers, directors, members, and/or employees of Parties to this Action who have a legitimate need to see such information in conjunction with the litigation of this Action;
- c. Plaintiff's counsel of record in the Action, and employees of his counsel of record;
- d. Defendants' counsel of record in the Action, and employees of their counsel of record;
- e. Persons not employees of Plaintiff's counsel of record or Defendant's counsel of record who are expressly retained to assist any of them in connection with the Action including, but not limited to, litigation support professionals, independent auditors, accountants, statisticians, economists, and other designated experts, and the employees of such persons.
- f. Witnesses, prospective witnesses, or deponents, examined for the purposes of this Action, provided, however, that no such witness shall be allowed to retain possession of Confidential Material he is not otherwise entitled to possess under this Stipulated Protective Order after the completion of his testimony;
- g. Court reporters and videographers; and
- h. Other persons as ordered by the Court

Prior to disclosure of Confidential Material to any such person in subsections (b) to (f) must agree to be bound by the terms of this Stipulated Protective Order by signing the Certificate of Acknowledgment, attached hereto as Exhibit A and returning the signed Certificate to opposing counsel;

6. **Copies and Summaries.** Any person who obtains access to material designated as Confidential under this Stipulated Protective Order shall not make copies, abstracts, extracts, analyses, summaries, or other reproductions which contain, reflect, or disclose the material, except for use in the Action in which the material was produced. Each such copy, abstract, extract, analysis, summary, or other reproduction which contains, reflects or discloses the

1 material, is to be treated as Confidential in accordance with the provisions of this Stipulated
2 Protective Order.

3 7. **Maintenance of Confidential Material.** All Confidential Material shall be stored
4 under the direct control of counsel of record or such other persons who are authorized to have
5 access to such material pursuant to Paragraph 5 hereof. The authorized person storing the
6 Confidential Material shall be responsible for preventing any disclosure of such material in his
7 possession, except in accordance with the terms of this Stipulated Protective Order.

8 8. **Filing Confidential Material.** If a Party wishes to file with the Court
9 Confidential Material, or the content and substance thereof, the Party must file the submission
10 under seal with the Court pursuant to the Court's rules for filing sealed items. A Party that seeks
11 to file under seal any Protected Material must comply with Local Rule 141. Protected Material
12 may only be filed under seal pursuant to a court order authorizing the sealing of the specific
13 Protected Material at issue. Pursuant to Local Rule 141, a sealing order will issue only upon a
14 request establishing that the Protected Material at issue is privileged, protectable as a trade secret,
15 or otherwise entitled to protection under the law. The Parties will attempt to file unsealed as
16 much of a pleading, motion, or other document as they reasonably can.

17 9. **No Prior Judicial Determination.** This Order is entered based on the
18 representations and agreements of the Parties and for the purpose of facilitating discovery.
19 Nothing herein shall be construed or presented as a judicial determination that any material
20 designated as Confidential by counsel or the Parties is entitled to protection under Rule 26(c) of
21 the Federal Rules of Civil Procedure or otherwise until such time as the Court may rule on a
22 specific document or issue.

23 10. **Additional Protective Orders.** This Stipulated Protective Order shall be without
24 prejudice to the right of the Parties or non-parties to present a motion to the Court for a separate
25 protective order as to any particular material, including restrictions differing from those as
26 specified herein. This Stipulated Protective Order shall not be deemed to prejudice the Parties or
27 non-parties in any way in any future application for modification or vacation of this Stipulated
28 Protective Order.

1 11. **Production of Privileged Documents.** The production of any material that would
2 be protected from disclosure pursuant to the attorney-client privilege, the work product doctrine,
3 or any other relevant privilege does not constitute a waiver of the applicable privilege or doctrine.
4 If a Party or a non-party produces any such material, the recipient agrees, upon demonstration of
5 a good faith basis for asserting that the material is subject to a privilege, the receiving party will
6 promptly return all copies of the material in the recipient's possession, delete any versions of the
7 material on any database that the recipient's maintains, and make no use of the material. Nothing
8 contained herein will limit or otherwise waive the rights and obligations of the Parties and non-
9 parties under Rule 502 of the Federal Rules of Evidence.

10 12. **Depositions.** Deposition transcripts or portions thereof may be designated as
11 "CONFIDENTIAL" either: (i) by captioned, written notice to the reporter and all counsel of
12 record, when or before the testimony is recorded, in which case the transcript of the designated
13 testimony shall be bound in a separate volume and marked by the reporter, as the designating
14 Party or non-party may direct, or (ii) by captioned, written notice to the reporter and all counsel of
15 record, given within ten (10) business days after the reporter sends written notice that the
16 transcript is available for review, in which case all counsel receiving such notice shall be
17 responsible for marking the copies of the designated transcript or portion thereof in their
18 possession or control as directed by the designating party. Pending expiration of the ten (10)
19 business days, the Parties shall treat any deposition transcript as if it had been designated
20 "CONFIDENTIAL" as directed by the designating Party or non-party. Where testimony is
21 designated at a deposition, the designating Party or non-party may exclude from the deposition all
22 persons other than those to whom the Confidential Material, including the content and substance
23 thereof, may be disclosed under Paragraph 5 of this Order. Counsel for any Party may mark
24 Confidential Material as a deposition exhibit and examine any witness thereon, provided they
25 designate the exhibit and related transcript pages as "CONFIDENTIAL."

26 13. **Third Party Requests for Production.** Should a Party receive a request from any
27 government authority or other third party for compulsory or voluntary production of material that
28 the receiving Party contends applies to any Confidential Material, including the content and

1 substance thereof, the other Party or a non-party has produced in discovery regarding this Action,
2 the receiving Party shall: (i) first respond by setting forward the existence of this Order;
3 (ii) notify the producing Party or non-party in writing of the request within two (2) business days
4 of receipt of the request, and (iii) absent consent of the producing Party or non-party disclose the
5 Confidential Material only to the extent it is compelled to do so by a court, arbitration tribunal or
6 regulatory authority, and any such disclosure shall be subject to the terms of Paragraph 14 of this
7 Order.

8 14. **Compelled Production.** Should a court or other authority, with the requisite
9 jurisdiction and power to do so, order or otherwise seek to compel a Party to produce Confidential
10 Material the other Party or a non-party has produced in discovery in connection with this Action,
11 the receiving Party (i) will notify the producing Party or non-party in writing within two (2)
12 business days of receipt of the order, and (ii) will not comply with any such order before the close
13 of business on the last day for compliance with the order, so as to allow the producing Party or
14 non-party a reasonable amount of time to object to and/or challenge the production, before this
15 Court, the court issuing the order, or other authority.

16 15. **Use of Confidential Material at Trial.** Nothing in this Order shall be construed
17 to affect the use of any material at any trial or hearing. A Party that intends to present or that
18 anticipates that another Party may present at a hearing or trial Confidential Material, or the
19 substance thereof, shall bring that issue to the Court's, Parties', and any producing non-party's
20 attention by motion or in a pretrial memorandum without disclosing the Confidential Material.
21 The Court may thereafter make such orders as necessary to govern the use of such material at
22 trial.

23 16. **Disposition of Confidential Material After the Action.** Upon the earlier of (i) a
24 final non-appealable adjudication of the Action, (ii) a resolution of this Action through settlement,
25 or (iii) at such time as is otherwise agreed in writing by the Parties hereto, counsel for the Parties
26 or their designees, shall either (i) assemble and return all documents, items, materials, deposition
27 transcripts, or information designated as Confidential Material and all copies of same to the Party
28 or non-party producing such materials, and shall certify the return thereof; or (ii) destroy all such

1 materials and provide a written certificate of such destruction to the Party or non-party producing
2 such materials.

3 17. **Submission to the Court.** The Parties agree to submit this Stipulated Protective
4 Order for entry by the Court. The Parties agree to be bound by its terms with respect to disputes
5 arising after its submission to the Court and subsequent to entry by the Court. This Order will not
6 be construed to modify the application of the local civil rules. This Order can only be modified
7 by order of the Court.

8 18. **No Waiver of Rights.** This Stipulated Protective Order shall not be deemed a
9 waiver of:

- 10 a. Any Party's or non-party's right to object to any discovery request on any
11 ground;
- 12 b. Any Party's right to seek an order compelling discovery with respect to any
13 discovery request;
- 14 c. Any Party's right to object to the admission of any evidence on any
15 ground;
- 16 d. Any Party's right to use its own materials with complete discretion; or
- 17 e. Any Party's or non-party's right to move the Court to amend any portion of
18 this Stipulated Protective Order.

19 19. **Duration.** This Stipulated Protective Order shall survive the final termination of
20 the Action to the extent necessary to effect its terms, provisions, and requirements.

21 20. **Remedies.** This Protective Order will be enforced by the sanctions set forth in
22 Rule 37(b) of the Federal Rules of Civil Procedure and any other sanctions as may be available to
23 the presiding judge, including the power to hold Parties or other violators of this Protective Order
24 in contempt. All other remedies available to any person injured by a violation of this Protective
25 Order are fully reserved.

26 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
27
28

1
2 DATED: July 6, 2020

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4
5 By: /s/Anita Taff-Rice

6 Anita Taff-Rice
Attorney for JONATHAN FINESTONE

7
8 DOWNEY BRAND LLP


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10 By: /s/Kelly Breen

11 Attorneys for Defendants Attorneys for UTILITY
12 TELECOM GROUP, LLC, UTILITY TELEPHONE,
13 INC., and JASON MILLS

14 **ORDER**

15 The court has reviewed the parties' stipulated protective order, and GRANTS the request
16 subject to the following clarification. This court's Local Rules indicate that once this action is
17 closed, "unless otherwise ordered, the court will not retain jurisdiction over enforcement of the
18 terms of any protective order filed in that action." L.R. 141.1(f). Courts in the district generally
19 do not agree to retain jurisdiction after closure of the case, and the court will not do so here. See,
20 e.g., MD Helicopters, Inc. v. Aerometals, Inc., 2017 WL 495778 (E.D. Cal. Feb. 03, 2017).

21
22 Dated: July 8, 2020

23 
24 KENDALL J. NEWMAN
25 UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

**CERTIFICATE OF ACKNOWLEDGMENT OF
STIPULATED PROTECTIVE ORDER**

I declare that:

I have been provided a copy of and have read the Stipulated Protective Order Governing Confidential Information (“Stipulated Protective Order”), entered in the case of *Jonathan Finestone v. Utility Telecom Group, LLC, Utility Telephone, Inc., Jason Mills, and Does 1-10*, Case No. 2:20-cv-00230-TLN-KHN (E.D. Cal.). I agree to abide by the Stipulated Protective Order and not reveal or otherwise communicate to anyone or use any of the information designated as “Confidential” that is disclosed to me except in accordance with the terms of such Order. I acknowledge that any violation of the Stipulated Protective Order may be punishable for contempt of court or result in civil liability, or both.

DATED: _____

Signature of Declarant

Printed Name

Street Address

City/State/Zip

Telephone Number